

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

SURJIT OBHI,

Plaintiff and Respondent,

v.

MOHINDER SINGH BANGA,

Defendant and Appellant.

H037025

(Santa Clara County  
Super. Ct. No. CV166464)

**I. INTRODUCTION**

After a court trial, defendant Mohinder Singh Banga was found to have breached his obligation under a promissory note to plaintiff Surjit Obhi. A judgment was entered against defendant and in favor of plaintiff for more than \$126,000 plus attorney fees and costs.

On appeal, defendant contends that plaintiff's civil action on the note was barred by the four-year statute of limitations for an action based on a written contract (Code Civ. Proc., § 337).

For reasons that we will explain, we will affirm the judgment.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On June 1, 2004, defendant signed a promissory note in plaintiff's favor. Under the note, defendant promised to pay plaintiff the principal amount of \$85,000, plus

interest at a yearly rate of 14.125 percent, in return for a loan that defendant had received. The note provided that defendant “will pay interest only for two years and principal due and payable after 2 yrs. by making a payment every month.” The first monthly payment of \$1,000.52 was due on June 1, 2004.

The note also provided that, if defendant failed to pay “the full amount of each monthly payment on the date it is due,” he would “be in default.” If defendant was in default, the note stated that plaintiff “may send [defendant] a written notice telling [him] that if [he does] not pay the overdue amount by a certain date, [plaintiff] may require [him] to pay immediately the full amount of principal which has not been paid and all the interest that [he] owe[s] on that amount.” If plaintiff did not require full and immediate payment, the note provided that plaintiff would “still have the right to do so if [defendant is] in default at a later time.”

Plaintiff never received any payment from defendant on the note.

On March 12, 2010, plaintiff filed a civil action against defendant and others. Relevant to this appeal, plaintiff sought in the first cause of action against defendant the principal amount of \$85,000, plus “ten percent (10%) simple interest from June 1, 2004.” Plaintiff also alleged three causes of action against defendant for fraudulent transfer under the Civil Code.

A court trial was held regarding plaintiff’s action against defendant. After receiving evidence, the court heard argument from counsel. Plaintiff’s counsel indicated that plaintiff’s action was only “on the promissory note” and that plaintiff was not pursuing the remaining three counts against defendant for fraudulent transfer. Defense counsel argued, among other things, that plaintiff’s action on the note was barred by the statute of limitations. After discussion between the court and counsel, the court provided the parties with the opportunity to submit further briefing on various issues, including on the issue of the statute of limitations. The court stated: “It appears to me -- and I’ll be happy to read your brief. It appears to me that . . . the note is June 1st, 2004, interest only

for two years until June 1st, 2006. Four years statute of limitation on a written promissory note. Suit filed March of 2010 within the four-year period of time. If you want to address that, fine. But that's the way it looks to me." The court indicated that it would issue a written ruling after receiving briefs from the parties.<sup>1</sup>

On May 9, 2011, the trial court filed a statement of decision. The court found that defendant had executed the promissory note "on June 1, 2004 for payment of the principal amount of \$85,000, all due in full upon the expiration of two years from its execution . . . . No part of said principal has been paid to date." The court disagreed with defendant's contention that the action was "barred by the four year Statute of Limitations." The court stated: "Suit was filed March 12, 2010 prior to the expiration of the Statute on June 12, 2010 [sic]. . . . [¶] Accordingly, plaintiff is entitled to Judgment against the Defendant in the amount of \$85,000." With respect to the interest payments that were due for the first two years under the note, the court found that the interest rate of more than 14 percent was usurious. The court determined that plaintiff was "still entitled to interest at the legal rate of 10% from date of the maturity of the note, June 1, 2006 to date of Judgment in the amount of \$41,496.16." The court also found that plaintiff was entitled to costs and reasonable attorney fees pursuant to the note. The court directed plaintiff's counsel to prepare a judgment consistent with the statement of decision.

On June 9, 2011, defendant filed a notice of appeal.

On June 29, 2011, a judgment was filed in favor of plaintiff and against defendant. A few months later, on December 6, 2011, the court filed an amended judgment. The

---

<sup>1</sup> The record on appeal does not contain a copy of any additional briefs filed by the parties.

amended judgment added an award of attorney fees and costs to plaintiff in the amount of \$15,786.60. Thus, plaintiff was awarded a total of \$142,282.76 against defendant.<sup>2</sup>

### **III. DISCUSSION**

Before considering defendant's contention that the statute of limitations bars plaintiff's action on the promissory note, we first address the issue of appealability. "[S]ince the question of appealability goes to our jurisdiction, we are dutybound to consider it on our own motion." (*Olson v. Cory* (1983) 35 Cal.3d 390, 398; accord *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1413 .)

#### **A. Appealability**

Defendant's notice of appeal indicates that he is appealing from a judgment purportedly entered on May 9, 2011. The record on appeal reflects that the only document filed on May 9, 2011, was the trial court's statement of decision.

For a reviewing court to have jurisdiction over a direct appeal, there must be an appealable order or judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 21.) "The general rule is that a statement or memorandum of decision is not appealable. [Citations.]" (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901 (*Alan*).) "Reviewing courts have discretion to treat statements of decision as appealable when they must, as when a statement of decision is signed and filed and does, in fact, constitute the court's final decision on the merits. [Citations.] But a statement of decision is not treated as appealable when a formal order or judgment does follow . . . . [Citations.]" (*Ibid.*)

In this case, the trial court's statement of decision was followed by the filing of a judgment on June 29, 2011, and eventually an amended judgment a few months later.

---

<sup>2</sup> The record on appeal does not contain a copy of the judgment filed on June 29, 2011, or the amended judgment filed on December 6, 2011. On our own motion, we augment the record on appeal to include the judgment and amended judgment. (Cal. Rules of Court, rule 8.155(a)(1)(A).)

The judgment was appealable, but not the earlier-filed statement of decision. (*Alan, supra*, 40 Cal.4th at p. 901.) Nevertheless, we will treat defendant’s notice of appeal as filed immediately after entry of judgment. (Cal. Rules of Court, rules 8.100(a)(2), 8.104(d)(2); see *Grossman v. Davis* (1994) 28 Cal.App.4th 1833, 1836, fn. 1 [citing California Rules of Court, former rules 1(a) and 2(c)].) We observe that in defendant’s opening brief on appeal, he states that he is seeking reversal of the June 29, 2011 judgment. Further, plaintiff has addressed the merits of defendant’s appeal and does not contend that the appeal should be dismissed. We therefore turn to the substance of defendant’s appeal.

### **B. Statute of Limitations**

Defendant contends that the promissory note was breached “when he first failed to make his payment, [on] June 1, 2004,” the date the note was executed. He argues that the applicable four-year statute of limitations began to run on that date, and that plaintiff’s action, filed more than five years later in March 2010, was untimely.

In response, plaintiff contends that the promissory note was payable in installments, and that the principal amount of \$85,000 did not become due until June 1, 2006, two years after the note was executed. Plaintiff argues that defendant’s failure to pay the principal amount on June 1, 2006, constituted the breach, and that plaintiff’s civil action, filed in March 2010, was “well within four years of June 1, 2006.” Plaintiff further contends that, although he had the option under the note to accelerate the due date of the principal based on defendant’s earlier default for failure to pay any interest, plaintiff never exercised that option. Thus, according to plaintiff, the trial court’s award of the principal amount plus interest since June 1, 2006 was not erroneous.

The statute of limitations for “[a]n action upon any contract, obligation or liability founded upon an instrument in writing” is four years. (Code Civ. Proc., § 337, subd. 1; *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.* (2004) 116 Cal.App.4th 1375, 1387 (*Armstrong Petroleum Corp.*).) “ ‘When an instrument is payable in installments,

the cause of action on each installment accrues on the day following the date the installment is due.’ [Citation.]” (*White v. Moriarty* (1993) 15 Cal.App.4th 1290, 1299 (*White*)). Consequently, “ ‘[w]here money is payable in installments, the statute of limitations begins to run against the cause of action for the recovery of an unpaid installment at the time it is payable.’ [Citation.]” (*Ibid.*; accord *Garver v. Brace* (1996) 47 Cal.App.4th 995, 1000 (*Garver*); *Trigg v. Arnott* (1937) 22 Cal.App.2d 455, 459 (*Trigg*)). Moreover, “[w]here a note contains an acceleration clause, ‘ . . . the statute does not begin to run on installments not yet due until the creditor, by some affirmative act, manifests his election to declare the entire sum due.’ [Citation.]” (*Garver, supra*, at p. 1000; accord *Jones v. Wilton* (1938) 10 Cal.2d 493, 500-501 (*Jones*); *Trigg, supra*, at p. 458.) “[W]here, as here, the underlying facts are not in dispute, the question when a statute of limitations begins to run is one of law, subject to independent review. [Citation.]” (*Armstrong Petroleum Corp., supra*, at p. 1388; accord *McLeod v. Vista Unified School Dist.* (2008) 158 Cal.App.4th 1156, 1164; see *International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.)

In this case, defendant fails to demonstrate error by the trial court regarding the application of the statute of limitations. Defendant acknowledges that the promissory note “called for monthly payments”; that for two years commencing June 1, 2004, the payments were interest only; and that it was not until “the expiration of 2 years . . . , i.e., June 1, 2006,” that the balance, which included the full principal amount of \$85,000, was due. At trial, there was no evidence that plaintiff elected to declare the principal amount due earlier than June 1, 2006, based on defendant’s failure to pay interest installments already due. Under these circumstances, the four-year limitations period did not begin to run against plaintiff’s claim for the principal amount of \$85,000 until that amount became due on June 1, 2006. (*Garver, supra*, 47 Cal.App.4th at p. 1000; *White, supra*, 15 Cal.App.4th at p. 1299; *Trigg, supra*, 22 Cal.App.2d at pp. 458-459; *Jones, supra*, 10 Cal.2d at pp. 500-501.) Within four years of the principal amount becoming due on

June 1, 2006, plaintiff in March 2010 commenced the instant action. The court's award to plaintiff did not include any principal or interest that became due prior to June 1, 2006. Accordingly, we determine that the court did not err in the application of the statute of limitations. (Code Civ. Proc., § 337, subd. 1.)

#### **IV. DISPOSITION**

The judgment is affirmed. Costs on appeal are awarded to plaintiff.

---

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

---

ELIA, ACTING P.J.

---

GROVER, J.\*

---

\*Judge of the Monterey County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.